

NOT FOR

EXHIBIT

4

DATE 3-26-07

HB 831

DISTRIBUTION**Fiscal Note 2009 Biennium**GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Bill #	HB0831	Title:	Revise water use laws
Primary Sponsor:	McNutt, Walter	Status:	As Introduced

- | | | |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
Expenditures:				
General Fund	\$623,717	\$607,207	\$366,587	\$376,201
State Special Revenue	\$18,000	\$18,000	\$18,000	\$18,000
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$18,000	\$18,000	\$18,000	\$18,000
Net Impact-General Fund Balance	(\$623,717)	(\$607,207)	(\$366,587)	(\$376,201)

Description of fiscal impact:

The legislation provides a mechanism in closed basins to allow the appropriation of groundwater if a hydrologic report and mitigation plan (if necessary), are provided. Hydrologic assessments and mitigation plans will require additional changes in use applications to be submitted and evaluated requiring more resources. The application process will increase litigation requiring more legal resources. Participation in the Case Study will require more technical and hydrologic resources. This bill appropriates \$500,000 to the Montana bureau of mines and geology.

FISCAL ANALYSIS**Assumptions:****Department of Natural Resources and Conservation (DNRC)**

1. Assume an average of 50 groundwater applications are received by the DNRC per year requiring mitigation through a change in use application.
2. Assume 90% of the groundwater applications will result in 45 change applications received per year.

3. Assume the remaining five applications will use some other method of mitigation using sewage effluent for aquifer recharge or the use of return flows.
4. The DNRC would require an additional 6.00 FTE including: 2.00 FTE., band five water resource specialists at a cost of \$88,634 to process the increase in change applications; 1.00 FTE, band six groundwater hydrologists, 1.00 FTE, band six surface water/water quality hydrologist and 1.00 FTE, band four hydrologic technician at a cost of \$157,178 for hydrologic review and case study participation; and 1.00 FTE, band six attorney at a cost of \$62,760 to handle litigation. Personal services costs are estimated at \$308,572 for FY 2008 and FY 2009.
5. Groundwater and surface water hydrologists are required to review each net depletion analysis, aquatic recharge and mitigation plan for adequacy of data and to determine whether the plan satisfies net depletion requirements.
6. The surface water hydrologist will need to evaluate each environmental assessment report on whether the water quality data shows impacts to existing water users and whether the water quality mitigation plan including appropriate treatment mitigates those impacts.
7. For the case study sites, up to ten sites, the surface water hydrologists and hydrologic technician will provide surface water measurements to determine impacts, if any to surface water resources when a well is pumped.
8. The surface water hydrologist and hydrologic technician will coordinate with the Bureau of Mines and Geology to gather and develop data to determine minimum standards and criteria for hydrologic assessments as defined in and associated with ground water withdrawals on surface and ground water resources and to review adequacy of reports by the Montana Bureau of Mines and Geology.
9. A hydrologist or groundwater hydrologist will visit each application site.
10. Hydrologic technician will do required monitoring and data work-up.
11. Assume 60% or 30 of the applications received will litigate the DEQ decisions concerning their assessment of net depletion, offset mitigation and adverse affect.
12. Assume operating expenses in FY 2008 of \$83,145 including network hookups, computers, office equipment, software, supplies, phone, postage, travel, rent, stream gages, groundwater monitors, and two lease vehicles. In FY 2009, operating expenses total \$66,635 for all of the prior listed expenses, excluding start-up costs for computers, software, and office equipment.
13. Assume 2.5% inflation factor for expenses in fiscal years 2010 and 2011.
14. Assume water right filing fees will fund an amount equal to the revenue received.
15. Assume this legislation will increase the number of applications received by 45 at \$400 per application, generating additional state special revenue of \$18,000 each year.

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16. Section 27 appropriates \$500,000 to the Montana bureau of mines and geology for the biennium beginning July 1, 2007.
17. Assumes the appropriation will be from the general fund and only in the 2009 biennium.
18. Estimated personal services costs are of \$196,300 in FY 2008 and FY 2009 for 1.63 FTE: 0.13 FTE senior hydrogeologist, 0.50 FTE associate hydrogeologist, 0.75 FTE research assistants, and 0.25 FTE research assistant.
19. Operating costs are estimated at \$294,200 in FY 2008 including travel (\$18,000), per diem (16,200), drilling of wells (35 wells x 200 feet x \$35/ft = \$245,000), and analysis of samples \$15,000 (20 samples x \$350 inorganic analysis + 20 x \$400 organic/pharmaceuticals).
20. Estimated equipment costs of \$9,500 in FY 2008 for monitoring, testing, and sampling.

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
<u>Fiscal Impact:</u>				
DNRC				
FTE	6.00	6.00	6.00	6.00
<u>Expenditures:</u>				
Personal Services	\$308,572	\$308,572	\$316,286	\$324,193
Operating Expenses	\$83,145	\$66,635	\$68,301	\$70,009
TOTAL Expenditures	\$391,717	\$375,207	\$384,587	\$394,202
<u>Funding of Expenditures:</u>				
General Fund (01)	\$373,717	\$357,207	\$366,587	\$376,202
State Special Revenue (02)	\$18,000	\$18,000	\$18,000	\$18,000
TOTAL Funding of Exp.	\$391,717	\$375,207	\$384,587	\$394,202
<u>Revenues:</u>				
State Special Revenue (02)	\$18,000	\$18,000	\$18,000	\$18,000
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FTE	1.63	1.63	0.00	0.00
<u>Expenditures:</u>				
Personal Services	\$98,150	\$98,150	\$0	\$0
Operating Expenses	\$147,100	\$147,100	\$0	\$0
Operating Expenses	\$4,750	\$4,750	\$0	\$0
TOTAL Expenditures	\$250,000	\$250,000	\$0	\$0
<u>Funding of Expenditures:</u>				
General Fund (01)	\$250,000	\$250,000	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$623,717	\$607,207	\$366,587	\$376,202
State Special Revenue (02)	\$0	\$0	\$0	\$0

Technical Notes:**Department of Natural Resources and Conservation (DNRC)**

1. The DNRC will make determinations on net depletion, mitigation plan and adverse affect upon receipt of an application. It is not clear what the recourse process is for the applicant who disagrees with any of these determinations. The DNRC could end up going to court three times on three issues at this point in the process.
2. The DNRC will be required to make an adverse affect determination based on the identified net depletion that causes adverse affect relative to the water right that is claiming to be affected. This determination is made prior to public notice and objection. The department will not be able to determine what water rights are claiming to be affected at this point in the process.
3. The hydrologic assessment required to be submitted with an application will be reviewed by the MT Bureau of Mines and Geology for scientific adequacy. If they do not provide the department with an

opinion within 90 days of receipt, the department must accept the report. There is no provision for the department when making the adverse affect determination, to disagree with the hydrologic assessment report.

4. The hydrologic assessment report must be prepared by a qualified scientist. He must predict what the net depletion of the new pumping well will be by a "preponderance of the evidence". A scientist does not know what this term requires and the term is inconsistent with all other existing burdens of proof.
5. The water quality requirements for the use of effluent discharge in a net depletion analysis and mitigation plan will likely negate their use. This provision will likely push development into using exempt wells to avoid the permitting and change process.
6. The amount of increased litigation is an unknown. There are several additional determinations that the department will be making prior to accepting an application that may be litigated in addition to litigation over the final decision on an application.

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7. It is unclear in section 27 whether the appropriation is ongoing.
8. The bill needs to indicate the funding source of the appropriation in section 27.

Sponsor's Initials

Date


Budget Director's Initials


Date

3/26/07